Wake Forest Jurist

Vol. 5, No. 1 Winston-Salem, N. C. Fall, 1974

"...AND WHETHER IT NESTLES IN A FOREST OF WAKE OR STANDS ON A KNOLL IN FORSYTH, ITS MISSION WILL REMAIN A QUEST FOR TRUTH AND A CRUSADE FOR SIMPLE RIGHT."

Stacy, C.J., *Reynolds Foundation, Inc. v. Trustees of Wake Forest College*, 227 N. C. 500, 516, 42 S.E. 2d 910, 920 (1947).

WAKE FOREST JURIST

Vol. 5, No. 1 Fall, 1974

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BOARD OF EDITORS

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STATEMENT OF PURPOSE AND POLICY

The *Wake Forest Jurist* is published twice yearly by the Wake Forest School of Law of Wake Forest University. Its main purpose is to inform the friends and alumni of the Law School about activities and events of interest at the Law School, of recent important decisions by the courts of North Carolina and other jurisdictions, and news of the achievements and activities of fellow alumni. In this way the *Jurist* seeks to provide a service and a meaningful link between the School of Law and its alumni. Also, the magazine shall provide an outlet for the creative talents of students and an opportunity for legal writing by them. Opinions expressed and positions advocated herein are those of the authors and do not represent official policy of the School of Law.

A MESSAGE FROM THE DEAN

Enrollment in the Law School is at an all-time high of 434. The admission of a small group of first-year students in January will boost our total enrollment to approximately 450. We expect to maintain the enrollment at that level, admitting approximately 150 new students each year.

Former "accelerated" students (sometimes fondly referred to by another, more colorful term) may be especially interested in knowing that the January admissions program is being phased out. The January 1975 entering class will be the last class admitted under this program, at least for the foreseeable future. This decision has been reached for two basic reasons. First, the January program no longer serves its original purpose of facilitating the legal education of veterans returning from military service. Second, because under present conditions the January program does not increase our enrollment (the additional students admitted in January could just as well be admitted in September), the expense of the summer school necessitated by the program represents a net loss to the School. I might add that the decision to terminate the program has been reached reluctantly, but with a firm conviction of its correctness.

The Law School community was saddened by the death in June of this year of Bethel Kelley, whom we had come to know and admire through his work as Lawyer-in-Residence at the School during the 1974 Spring Semester. A partner in a leading Detroit law firm, Bethel and his lovely wife Jane had returned to Michigan only a week or two prior to his death. We are grateful for his many contributions here and for having had the privilege of knowing him.

As I write this, planning and preparations are underway for the 1974-75 Law School Fund. I urge all our alumni to participate in this campaign. Every dollar raised through the Fund is used for Law School purposes, either to meet operating costs or to increase the School's endowment. This financial support is essential if the School is to meet its goal of continuing to offer an excellent legal education at reasonable cost to the student.

Alumni support in recent years has been outstanding. In 1973-74, total giving to the Law School amounted to $300,850, a thirty-fold increase in yearly fund raising since 1969-70. That impressive total was reached even though only 22% of our approximately 1800 alumni contributed to it. Think what it would mean to the School if *every* alumnus took part in the annual fund drive.

The best way of participating in the annual fund is to become a Law School PARTNER, which one does by making a gift of $100 or more. Those giving $500 or more are designated SENIOR PARTNERS. Last year we had 176 PARTNERS, 64 of whom were SENIOR PARTNERS. Both of those totals, I am pleased to note, were up substantially over the preceding year. This year's Banquet (for those who became PARTNERS during 1973-74) was held at the Winston-Salem Hyatt House on the evening of September 20. Approximately 175 persons were on hand for the reception, the dinner, and a speech by noted economist-author Henry Hazlitt. A number of alumni participated in the annual PARTNERS' Golf Tournament at the Old Town Club during the afternoon preceding the Banquet. Prizes awarded for low gross and low net were won, respectively, by Ken Etheridge, '60, and Bob Yelton, '67.

The Law School, like all private law schools, must seek continuing support from its alumni. It also wishes to be of service to its alumni. Whenever it appears that we may be able to assist you, whether in a placement matter or in some other way, please call on us.

Pasco M. Bowman

THE EDITOR'S PAGE

This issue of the *Jurist* has happily been working through an editor's blessing: so much good copy that it can't all be printed. The Legal Articles section of this issue has several exceptionally well-written articles; I hope all will take time to read them. A considerable amount of law school news has also been unfolding, and that section includes an introduction to our several new faculty members. Also, an interview with Mr. Horace Kornegay will provide our readers with some thoughtful comments concerning current events that should interest both students and alumni.

My personal thanks go to our Editors and staff members, who have compiled their material most efficiently; both students and alumni owe these people a debt of thanks for a job well done. This particular issue achieves a professional style that speaks well of all involved.

As an aid to communication links between the school and its alumni, I would like to announce a special feature under consideration for the spring issue, which will involve a statewide assessment of women in the law in North Carolina. I invite interested alumni, students, and friends to make suggestions concerning topics of interest, such as student organizations in the several law schools across the state, prominant women who are members of the bar, sit on the bench, or are members of state or national legislatures. We hope to bring about a general awareness of the role that women play in what may appear to some to be a traditionally male profession. We would like to focus particularly on graduates from our law school, but will not limit the topic exclusively to those persons.

We have recently had many requests for back issues of the *Jurist* to update individual files and libraries, as well as additional names and institutions for our mailing list. Although

Editorial Board: l. to r., Gabriel, Joseph, Rayle, Lee (standing), Ferguson, Cline.

we exist primarily for students and alumni, we are glad to consider other reasonable requests, that may be forwarded to the law school, for addition to the mailing list.

The recently formed Alumni Board of Advisors has provided a new depth to the contact between staff and alumni; hopefully, it may be of use for students who desire more personal contact with the legal community in North Carolina. This is an area where much potential lies for contribution to the integration of "school-taught law" and practical application of the law. I anticipate development of this area in the future.

A final word of thanks goes out to the school administrative personnel, who devote their time and energies in many ways, in assisting our office with gathering data, and carrying out routine office procedures.

Richard Gabriel

LAW SCHOOL NEWS

PHI DELTA PHI NEWS

Stan West, Historian

Ruffin Inn of Phi Delta Phi is looking forward to another banner year, having accepted 34 new members during 1973-74 to bring the total membership to 139. The new officers for the coming year are Mary Murrill, Magister; Nick Dombolis, Vice-Magister; Irvin Sink, Exchequer; Steve Crosby, Clerk; Stan West, Historian; and Aaron Clinard and Ralph Hill, Social Chairmen. Don McFadyen, a third-year Phi, was elected Editor-in-Chief of the *Wake Forest Law Review* for the coming year.

Social events for this year will include rush parties on football weekends, the annual Christmas Party, Steeplechase Weekend, and a Casino party. All alumni are invited to attend these Phi functions.

Phi intramural teams will again participate in football, basketball, softball, golf, and tennis, with a large percentage of the membership participating.

In professional programs, tentative plans have been made for a forum on plea bargaining for late October, and other such programs will be announced in the spring.

PHI ALPHA DELTA REPORT

Tim Cosgrove, Alumni Chairman

Timberlake Chapter of Phi Alpha Delta Law Fraternity was again voted the outstanding chapter in the nation this past summer at the national convention in Toronto, Canada. This year under the leadership of Justice Dave Francisco, the brothers and sisters of Phi Alpha Delta plan to continue the outstanding community-oriented and professional activities which have made Timberlake Chapter one of the most highly-respected legal fraternities in recent P.A.D. history.

This year P.A.D. will continue to offer for the benefit of the entire law school the police ride program, whereby law students are individually assigned to police officers on patrol, so as to acquaint the student with the realities of law enforcement. P.A.D. continues to offer the highly effective high school speakers program where law students perform mock trials in local high schools. New this year in the P.A.D. repertoire is a program designed to bring law students into contact with local attorneys and businessmen concerned with the law. Students will be assigned to an attorney or businessman for an afternoon or for several days depending upon the activity so that the student may observe first hand these men as they encounter day-to-day problems and discuss with them their observations. This is a modification of past programs where attorneys or businessmen were brought to the school to lecture or speak.

P.A.D. social activities continue this year unhampered by our decreased numbers. The highlight of last year's spring banquet was a speech given by our honorary initiate, Lewis Alexander of Elkin. This year's activities so far have included a cocktail party for rushees given after the William and Mary game which was held at the Hyatt House, and a smoker in which the main speaker was the Honorable Eugene Gordon, Chief Judge of the Federal District Court, Middle District, North Carolina. Future plans include a pig roast to be held at Tanglewood Park and the annual P.A.D. Open Golf Tournament yet to be scheduled.

Our regards to the alumni. If any of you desire information concerning our activities, please write to us in care of the law school.

PROFESSOR HOWARD L. OLECK

James K. Roberson

As of the beginning of this year, the Wake Forest University School of Law is fortunate to have Professor Howard L. Oleck on its faculty.

Professor Oleck is teaching Corporations and Torts during Fall Semester and will conduct classes in Non-Profit Corporations and Damages in the Spring.

Professor Oleck, a native of New York City, attended undergraduate school at the University of Iowa where he received a B.A. degree. He received his J.D. degree from New York Law School. He was admitted to the New York Bar in 1938 and the Ohio Bar in 1957.

Professor Oleck has had a most prestigious career in law. Since 1947 he has been associated with the teaching aspect of the profession. He most recently served as Distinguished Professor of Law and twice Dean at the Cleveland State University College of Law. He is a renowned and respected legal author, having published some 32 books, 300 articles, and 800 columns. He is appropriately listed in *Who's Who in America* and the *Directory of Scholars*.

The Professor expressed some unique reasons why he, his wife and two daughters chose to become a part of our Wake Forest community. He liked the school and the people he met when visiting it. Particularly appealing to him was what he termed the "balance" of Wake Forest's Law School; that is, it is a prestigious school which not only stresses scholarship but also emphasizes "personableness."

Professor Oleck

Professor Oleck is an exceptionally distinguished member of the legal profession and a valuable asset to our expanding faculty.

DR. JAMES E. BOND

James K. Roberson

During the 1974-75 school year, the Wake Forest University School of Law will be enjoying the services of Dr. James E. Bond, who is visiting us from the Washington and Lee University Law School.

Dr. Bond is presently teaching Jurisprudence and Criminal Law I. During Spring semester he will conduct a course in Constitutional Law. Throughout the year he will be integrally involved with the Legal Bibliography program.

Dr. Bond, a native of Nebraska, received his B.A. degree from Wabash College in Indiana. During the summer before he began law school he was involved with the civil rights movement in Mississippi. He obtained his L.L.B. from Harvard University, and his L.L.M. and S.J.D. from the University of Virginia. He clerked for a federal district court judge and taught in the Army's Judge Adjutant General School before joining the faculty of Washington and Lee.

Dr. Bond is the author of a recently published book entitled *Rules of Riot*. A second book on plea bargaining has a tentative release date of January, 1975. While in the Army, Dr. Bond was responsible for revision of the the Army's set of instructions to its soldiers with regard to policies agreed upon at the Geneva Convention.

As to the reasons why he, his wife and son decided to come to Wake Forest, Dr. Bond cited the opportunity to work with his friend, Professor Charles Rose, in the Legal Bibliography program as his prime consideration.

STUDENT BAR COUNCIL REPORT

Henry A. Harkey, Chairman, S.B.C.

Since the spring of last year, several major changes have taken place in our student government. First, the student body voted overwhelmingly to adopt a new constitution, which among other things, provides for the election of Student Bar Council members on a class basis rather than through the legal fraternities. Each of the three academic classes now elects five representatives to the Council. These fifteen representatives plus the two fraternity presidents constitute the voting membership of the Council. The Council officers are elected from among the representatives.

In addition to voting on a new constitution the student body also voted on a proposed written honor code and a student judiciary procedure to enforce that code. However, the proposals received only a one vote majority so they were resubmitted to the committee chaired by Ms. Katherine Duncan for further study and revision. The entire student body was recently resurveyed in order to ascertain their support for a written honor code at this school.

Professor Bond

Although there have been some changes made recently, there are many aspects of student government which remain the same. One of these is the emphasis placed on presenting informative professional programs on topics of current interest. Two such programs are planned for the fall. The first takes place on October 17 when the Attorney General, Mr. James Carson, and Mr. Rufus Edmiston meet in the law school courtroom to debate the issues surrounding the upcoming election for that office. Later this fall the SBA will sponsor its annual symposium. The topic will be *Criminal Law: Sentencing*. Mr. Michael Joseph is presently working to secure in-state speakers with experience in this field of practice. We hope to be able to secure a criminal trial attorney, district attorney, probation officer and judge as participants.

In addition to providing professional programs,the SBC continues to serve other student needs. The placement of our graduates is of major concern. For this reason, the SBC has appointed a student, Mr. Morris Keeter, to serve as liaison between the Placement Office and the SBC. *The Hearsay*, under the direction of Ms. Anne Renaud, continues to provide a needed means of communication within the law school. (*The Hearsay* is our one-year-old newspaper.) Emphasis will also be given this year to the ABA-LSD (American Bar Association - Law Student Division.) The school representative is Ms. Addie Behan. Increased membership in this organization benefits not only the student member but also the student body as a whole.

The Student Bar Council is now on the move but there are always areas of interest and need which will inadvertently be overlooked. If you have any questions or suggestions which you would like to address to us, please don't hesitate to do so. The purpose of the Student Bar Council is to serve the students—present, past and future.

THE MOOT COURT BOARD

Michael G. Walsh, Chief Justice

The Wake Forest Moot Court Board continues to offer a program aimed at developing the skills of advocacy and legal research in a realistic setting. Following its modest beginning in Spring, 1972, the Moot Court Board has grown significantly in both size and scope. This year the Board has added a Board of Editors to aid in the preparation of research problems for the Practice Court II program.

Practice Court II offers second-year students the opportunity to brief and argue cases that are currently on appeal around the nation. Board members provide the problems, obtained during their summer work in law offices, and sit as judges at the arguments of the cases.

Later this semester, newly chosen Board members will help to administer the first-year Legal Bibliography course, serving as advisors to the "teams" of fledgling lawyers and later sitting as judges for the oral arguments to follow.

On October 30, 31, and November 1, the National Moot Court Team, sponsored by the Moot Court Board and representing Wake Forest for the third consecutive year, appeared in the Southeast Regional competition in Richmond. This year's problem is based in part on the recent Supreme Court decision of *DeFunis v. Odegaard* involving the issue of "reverse discrimination" in minority recruitment programs in higher education. Joyce Neely, Henry Harkey, and Michael Walsh comprise the first team; Jim Jordon, Dan Taylor, and Michael Greeson make up the unofficial second team.

The Moot Court Board's schedule for the remainder of the year will include the sponsorship of an International Moot Court Competition team, the second annual Judge Edwin M. Stanley Intramural Moot Court Competition, and possibly the first team to represent Wake Forest in the Patent Law Moot Court Competition, to be held in Washington, D.C., in the spring.

The Moot Court Board prides itself on its involvement with a most varied representation of Wake Forest law students. The program is open to all who sincerely desire to improve their skills in legal research and advocacy, and offers the unique opportunity to convert classroom theory into practical application.

LAW SCHOOL CURRICULUM EXPANSION

Edward M. Ferguson

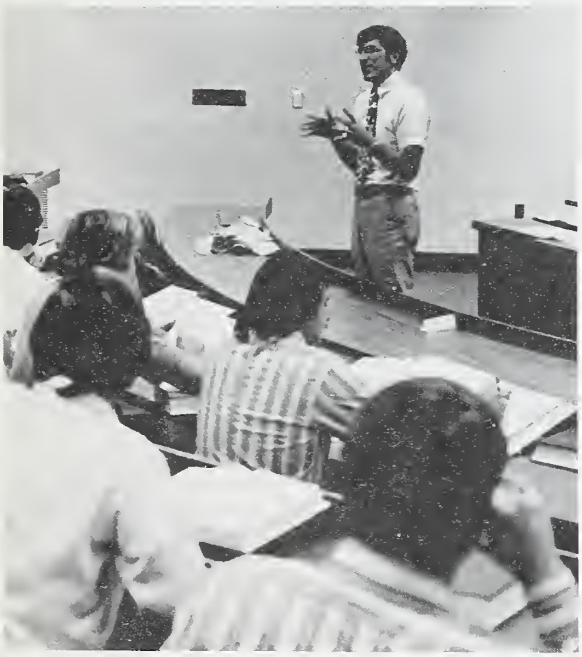
The Wake Forest School of Law has been very fortunate during the last school year to have Dr. Howard Oleck and Professor Sylvester Petro join the faculty. With the infusion of new faculty there has been a concomitant increase in course offerings.

Dr. Oleck will be teaching two new courses in the spring, one covering Damages and the other Nonprofit Organizations. Dr. Oleck is the author of *Cases on Damages*, (1962). His course will encompass the general principles of the nature of damages, will investigate nominal, compensatory, and punitive damages, and will go on to examine certainty and foreseeability of damages. As a further aid to the future trial attorney Dr. Oleck will also be pursuing the pleading and proof of damages and their minimization and mitigation. The course will also include an in-depth study of specific torts relating to personal injuries, death actions, nuisance and fraud actions; and a close study of specific contract damages in such areas as sales and service contracts, leases, and liquidated damages.

Dr. Oleck has garnered a well-deserved reputation in the area of his second new offering, Nonprofit Organizations. He is the author of a very complete text on this subject entitled

Non-Profit Corporations, Organizations, and Associations, (1974). Nonprofit Organizations will be structured as a seminar and will offer the student coverage on the organization and operation of both charitable and nonprofit enterprises, trade associations, foundations, and civic groups. He will also show the student the use of incorporated and unincorporated nonprofit organizations in connection with business enterprise planning.

Professor Petro has specialized in the area of labor relations and will be sharing his expertise in two labor courses to be offered in the



spring. Professor Petro is the author of several books in this subject area such as *The Labor Policy of the Free Society* (1957), *The Kohler Company Strike* (1961), and *The Kingsport Strike* (1967). More recently he was the author of a comprehensive article entitled "Sovereignty and Compulsory Public-Sector Bargaining" appearing in 10 Wake Forest L. Rev. 25 (1974).

Labor Relations II will be a three-hour course offered in the spring analyzing the legal concepts and principles of current labor law developments and their social policy applications. Professor Petro's second new offering, Labor Relations III will be a two-hour spring course studying the legal problems of public sector labor-management relations and will further analyze the organization and collective bargaining of public employees. In addition, he will discuss the impact that federal and state statutory law and administrative regulations have on public sector labor relations.

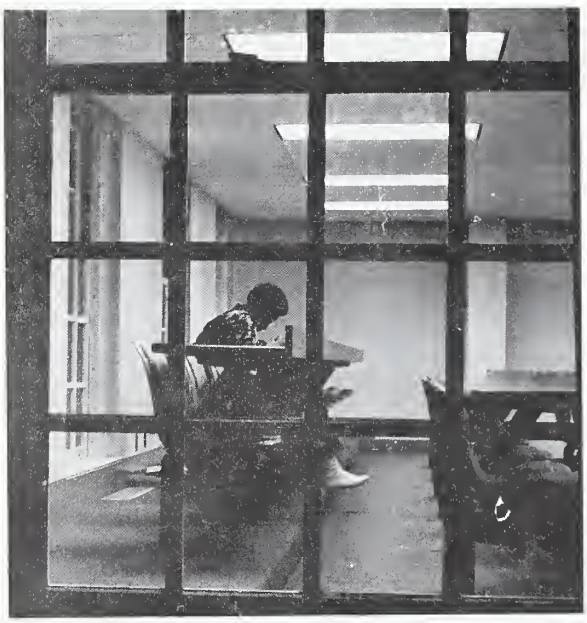
A fourth labor relations course, again offered in the spring, will be taught by Mr. John Fisher, an attorney with RJR Industries, Inc. He will lecture on representation proceedings whereby employees express by election their desire to have union representation. He will also focus on the Occupational Safety and Health Act and racial and sex discrimination laws.

This fall Professor James Sizemore has begun to teach a new two-hour course on Law and Forensic Medicine. Professor Sizemore has long been interested in this area of the law and has lectured at the Bowman Gray School of Medicine on Medical Jurisprudence. He will be drawing on his many years of experience in examining the use of expert testimony by the trial attorney and how the doctor can help in the preparation and presentation of personal injury cases. He will also explore malpractice litigation. As a course aid Professor Sizemore has enlisted the aid of guest lecturers from the Bowman Gray School of Medicine who will give added instruction on medical and allied specialties.

The offerings in taxation have been further expanded with the addition of Mr. Malcom Osborn, Vice President and Tax Counsel of Integon Life Insurance Corporation, as a lecturer-in-law. In the fall Mr. Osborn is teaching a one-hour course on Tax Procedure which will examine the administration and enforcement of federal tax laws by the Internal Revenue Service, the Department of Justice, and the Treasury Department. Following this introduction the student will receive an in-depth study of procedural problems with respect to proposed and final regulations, and

private and published revenue rulings. The course investigates tax audits, tax assessments, refund claims, tax liens, and the effect of the statute of limitations. In the spring Mr. Osborn will be teaching Taxation of Partnerships and Trusts. The analysis of partnership tax problems in such areas as organization, operation, income distribution, reorganization, the sale of partnership interest, and dissolution will make up half of this offering. The other half of the course will concern income tax problems as they relate to trusts and estates. Specifically, grantor trusts, income in respect of a decedent, the assignment of income and accumulated trust treatment will be the subject of investigation.

Another area of study for Wake Forest School of Law is being added to the curriculum. Mr. Paul Bell, a 1948 graduate of Wake Forest School of Law, and a partner in the firm of Parrot, Bell, Seltzer, Park, and Gibson in Charlotte will be lecturing on Patent Law. This two-hour course, to be offered this spring, will explore the patentability of new inventions and the rights that a patentee possesses. A substantial part of this new subject will be devoted to the problems encountered in the enforcement of patents, their licensing, and anti-trust considerations in their use.



WOMEN'S RIGHTS GROUP TO FORM

Catharine G. Biggs

Members of the Wake Forest law community are now in the process of organizing a group which will focus its interest on women's rights. The group seeks to educate themselves and the community in the law as it differentiates between the sexes. Further, it seeks to participate in the elimination of any discrimination.

The goals include working with admissions and placement to encourage more women to enter the practice of law. Similar groups at other schools have provided particularly positive forces in this area.

The constitutional committee has nearly completed its task of shaping the goals and organization. Fund-raising through projects and donations is the next step, as it appears that the Student Bar will be unable to assist the group. The committees of the as yet unnamed group will begin work early in October in their effort to contribute to our continuing education.

One of the overriding goals is to bring in speakers who can further the instruction of our community in the sources of sex-based discrimination and the means of eliminating it. All members of our law community, including alumni, are invited to participate in the new group.

PRACTICAL EXPERIENCE COMES TO WAKE FOREST

Rebecca Ferguson

"I don't learn anything but legal theory!" has been a popular outcry in law schools for years. But thanks to the interest and hard work of Associate Professor George K. Walker, Wake Forest law students can no longer say that. Under his guidance, the law school has recently established an appellate argument program,

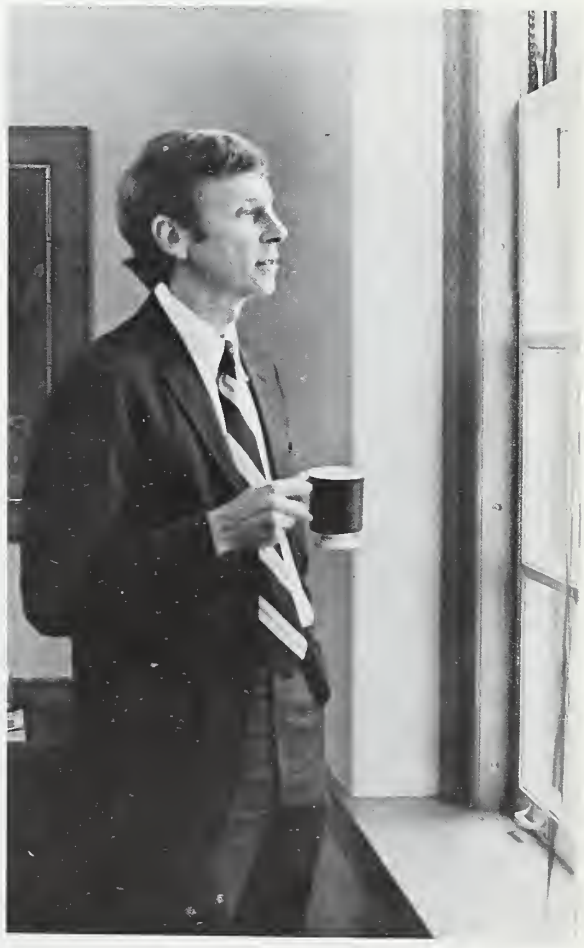
the Appellate Advocacy Seminar, which gives students a chance to work on Fourth Circuit cases.

Under Supplemental Rule 13 of the Rules of the U.S. Court of Appeals for the Fourth Circuit, a third-year law student now has the opportunity to argue before that court. Four types of cases come under this heading: the state post-conviction appeals of indigents, prisoner civil rights cases under 42 U.S.C. sec. 1983, appeals of denied motions to vacate under 28 U.S.C. sec. 2255 on federal convictions, and appeals from federal convictions. In the latter two instances, the students can appear either for the U.S. Attorney or for the defendant.

In these cases, a supervising lawyer-professor is first appointed as counsel of record. The student must be certified by the Dean as possessing requisite moral character and legal ability. He must have the consent of both the supervising professor and the indigent appellant before he works on the case. Also, he must state that he has read and understood the canons of professional ethics. Once a student has been admitted to the case, he drafts briefs and pleadings on appeal, subject to the inspection of the supervising lawyer. In essence, he is treated as a beginning associate in a law firm, doing the basic drafting work with the professor putting on the finishing touches. When the case comes up for argument, either the student or the supervising lawyer may argue before the court.

Generally, the Appellate Advocacy Seminar is open only to students who have completed legal bibliography and another appellate argument project such as Practice Court II. The number that may participate is limited to approximately two to twelve per semester. Most cases have two students collaborating on research and drafting, although a few cases are complicated enough to merit three students. For this work, students receive one hour of credit though the general student consensus is that it takes much more than one credit-hour's worth of work.

Mr. Walker is looking forward to expansion of the program. The Fourth Circuit cases are open to any practicing attorney admitted to practice before the Circuit Court. Mr. Walker pointed out that the only other southeastern law schools that now participate in this program are UNC, Duke, Virginia, and a few of the Washington-area schools. He feels that a program of this type is of enormous advantage to a student in that an actual skill is learned, in addition to substantive knowledge gained through standard classroom recitation. It is a skill which can be put to immediate use upon graduation from law school. The experience is a good selling card when looking for a job and gives the graduate a head start in the office by letting him get to know the ropes. Now who says there's no practical experience to be gained in law school?



FIRST YEAR STUDENTS: A STATISTICAL SURVEY

Kenneth Anderson

The School of Law admitted 144 students from a total of 1092 applicants for the fall semester. This is the largest class in the school's history, comprising eight students more than the 1972 entering class of 136.

Although the total number of 1974 applicants was down 7% from last year, the credentials of the entering class are nonetheless impressive and in keeping with the high standards established over the past few years. As undergraduates, these men and women had a "B" average (3.0 cumulative grade point average on a 4.0 scale); the average Law School Admission Test score was approximately 600.

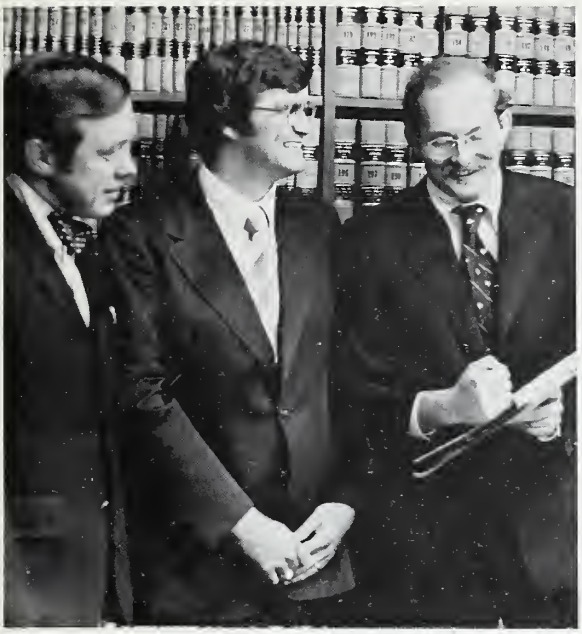
Predictably, this years class also contains the largest number of women students. Twenty-five new women students entered, bringing the total enrolled at the law school to 60. Thirty-three percent of the class bring spouses with them to the law school community. One minority racial group representative is in the "Class of '77."

In keeping with tradition, the majority of newcomers, 60% in fact, are natives of North Carolina. However, Wake Forest produced only 23 of the first-year students. The University of North Carolina at Chapel Hill sent 33 new law students. The third largest group was from North Carolina State with 10 students. In all, 63 undergraduate colleges and universities are represented.

1974 LAW ALUMNI HOMECOMING

The annual homecoming for Wake Forest law alumni was held Saturday, Sept. 21, with the theme of Legislator's Day. The program was kicked off Friday evening, Sept. 20, with the Partner's Banquet which was held at the Hyatt House. The main speaker of the evening was Mr. Henry Hazlitt, a distinguished columnist and author of several books on economics, who spoke on the topic of inflation.

Saturday morning, a program was held in the law school courtroom. Wake Forest Alumni who are either serving currently as legislators or those who have served in the past were honored and recognized. Also included in the salute were persons who are now legislators and members of official Wake Forest boards, though not Wake Forest Alumni.



Mr. James Johnson, President of the Wake Forest Lawyer Alumni Association, reported on alumni contributions, noting a total of $300,850. He was also pleased to announce that a $50,000 scholarship had been awarded to the Law School by Harold and Jean Wilson.

New members of the faculty were introduced to the alumni. Professor Rose commented on how vital alumni support is to a law school and how it contributes to setting up "a sense of community." Professor Bond pointed out that alumni can contribute not only through funding of the school, but by communication of new ideas concerning teaching, faculty, and so forth. Professor Oleck said that he liked Wake Forest because, "Professionalism must deal with humanity...I think Wake Forest has retained the humanity along with the professionalism." Professor Petro, one of Dean Bowman's mentors, said quite simply of his move from N.Y.U. to North Carolina, "I haven't been sorry."

Dean Bowman gave a report on the state of the law school, pointing out that enrollment is at an all-time high with 434 students currently enrolled and 15 or 16 more expected in the January class. 450 students is the planned maximum for the available facilities. He noted the amount of competition for the spaces in the first-year class - nearly 1100 applications for 145 spaces - but made the point that merely turning out more lawyers or building more law schools was not the answer. At the present output levels, he said, the number of lawyers in N. C. in 1980 will be double the number in 1969-70, and it is questionable whether the profession could absorb a greater number than that.

Dean Bowman also discussed the state of law school finances and how inflation has hit the school. In 1970-71, the total operating budget was $350,000. In 1974-75, the budget is $900,000. Of course, part of this rise is due to the bettering of certain programs offered, more faculty being retained, more support being given to student activities, and so forth. At present, the law school is financed 90% through tuition and 10% through gifts and grants and income on the endowment. Dean Bowman said that this is not a good balance, as it rests so heavily on tuition. Ideally, the endowment would be much larger and there would be more scholarships available to allow Wake Forest to compete with state-supported schools for students.

After the program, there was a buffet luncheon served in the law school library before the traditional football game. When the game was concluded, the alumni gathered at the Sheraton for cocktails and conversation.

LEGAL ARTICLES

CORPORATE BONDS AND SINKING FUNDS

Richard W. Gabriel

An unsecured long-term investment obligation available to public investors is usually referred to as a debenture; when issued by private enterprise, they are known commonly as the corporate bond. They usually take the form of an unconditional promise to pay, contain limitations on the firm's ability to pledge otherwise free assets, and restrict taking on debt superior to that for which they stand. If payment of interest or principal is deferred, or subject to conditions, the bonds are subordinated. The indenture is the contract which embodies these and other conditions. A common inclusion in the indenture is a sinking fund provision. Essentially, this is a specific reserve account set up by the indenture to provide liquid funds for retirement of the bond debt. V. Brudney and M. Chirelstein, *Cases and Materials on Corporate Finance* (Mineola, N.Y. 1972). Our purpose is to investigate briefly the consequences of such a fund and its true value to the public investors.

The sinking fund is intended to provide security for the debt owed. This is certainly an ambivalent security at best, with payments to the fund most likely to be made when the corporation can afford, and it being to the bondholder's best interest to permit payments to be deferred when available assets are low, such funds being needed more for current operations. Thus, when funds are most needed by the enterprise sinking funds may be unavailable for further structural application. One author contends that sinking funds are in fact no more than psychological aids to investors. Dewing, *The Financial Policy of Corporations*, pp. 238-39 (5th ed. 1953).

The internal value of the fund relates primarily to management theory. Two basic management concepts have developed concerning corporate bonds: 1) evidence of debt due in the future; 2) a device giving investors a favored position in the enterprise in return for a low fixed return on capital. The primary value in the fund seems to be that of making management recognize the fact that a payment of an obligation is due, however far in the future that may be.

At least two other aspects of a bond sinking fund should be noted. One is that the indenture makes payments contingent upon some other factors, such as a minimum level of corporate profit or earnings. Also, the indenture may provide that the funds collected be appropriated in certain ways, thus permitting an additional stream of income to the enterprise. This latter aspect deserves more attention, for here it is possible to strip the fund of any security value at all. For example, if the fund can be appropriated so that it may be applied to any part of the capital structure except payment of dividends on common stock, the fund effectively becomes a mere bookkeeping entry. This type of appropriation is common to Utilities' issues. Conversely, if the fund may be appropriated for investment in so-called "safe" investments only, such as government securities, then the sinking fund capital at most serves to generate partial payment of its own interest. This seems a necessary conclusion since, in order to attract investors initially, corporate bonds presumably have an interest rate commensurate with other available investment alternatives, yet sufficient to attract capital.

The sinking fund is an apt concomitant for the callable bond, however. Most industrial bonds are equipped with call provisions that enable the corporation to retire the debt prematurely. Should a firm wish to embark on a large scale investment-expansion project, for example, it may be advantageous to retire as much outstanding debt as possible. In this case, sinking fund reserves convertible into ready cash are useful assets. Such call provisions would probably be reflected in the bond's market price, however, because of uncertainty over the income-producing lifespan of the bonds.

One is tempted to wonder what useful purpose a sinking fund for bonds serves. While

bonds are certainly a useful form of capital procurement, the massive terminology of indenture covenants provides more of a security blanket for investors than actual security for a debt owed. Perhaps "final judgment" is rendered in reorganization or insolvency proceedings. If forced into bankruptcy, it is the court which will determine the real value of sinking funds. Rather than giving the bondholders a claim to the funds, such funds are usually cast into the common grouping of assets, for distribution according to priority of claim. In this case, the mere fact of priority in the indenture granted to the bondholders is the saving factor, and not the sinking fund itself. In the event of liquidation, the bondholders are thus left to press their claims with all other rightful contenders. In the case of reorganization, about the best the bondholders can hope for is an equivalent amount of equity through the "fair and equitable standards" rule, with the sinking fund itself playing no role at all in most circumstances.

ACCOUNTANTS' LEGAL LIABILITY

C. Cyclone Covey

Accountants are finding themselves the victims of increasing malpractice suits. Disgruntled clients, creditors, and investors are claiming losses due to reliance on erroneous financial statements bearing the accountant's opinion. This article analyzes the current increase in accounting litigation by looking at (1) the accountant's function, (2) his duty of care to the client, and (3) his liability to third parties under the common law and federal securities acts.

To understand thoroughly the accountant's liability, one must understand the accountant's function as an auditor. His main function is to "attest" to management's accumulation, recordation and presentation of accounting data. He gives his opinion as to whether management followed generally accepted accounting principles. [W. Meigs, E. Larsen, R. Meigs, *Principles of Auditing*, 4 (5th ed. 1973).] Consequently, accountants do not prepare financial statements. Management prepares the financial statements from its accounting records. Although accountants frequently draw up financial statements, management is still deemed to have prepared the financial statements since the financial data has come from management's accounting records. Thus, the accountant merely reviews management's records and issues an opinion on the financial statements. [See P. Rosenfield and L. Lorensen, "Auditors' Responsibilities and the Audit Report," 138 *J. Accountancy* 73 (Sept. 1974).]

The opinion rendered by the accountant is neither a certificate of correctness nor a guarantee of accuracy. It is not an assurance of a good investment or credit decision. It is merely the expression of an expert, professionally trained and licensed, about the financial statements. (Meigs, *supra* at 23.) The accountant states his opinion whether management followed generally accepted accounting principles consistent with those used in the preceding year. He also states whether

the accounting data in the financial statements is presented fairly and in conformity with generally accepted accounting principles. [Comm. on Auditing Procedure, AICPA, *Statement on Auditing Procedure No. 33 (1963)*; see the Short-Form Audit Report recommended by the Comm. on Auditing Procedure of the AICPA.]

The accountant's audit is the basis of his opinion. Audits are performed to determine the kind of opinion that should be rendered. They are *not* performed to find employee defalcations, even though as a by-product of the audit many such defalcations are discovered. Audits consist of various procedures whereby management's accounting records are reconciled, verified, and analyzed. The audit is conducted along the lines of the Auditing Standards set forth by the AICPA Committee on Auditing Procedure. (Meigs, *supra* at 18-19.) Failure to comply with these standards subjects the accountant to claims that he has not exercised professional care.

The accountant's standard of care is similar to the standard of care required of doctors and attorneys. [*Gammel v. Ernst & Ernst*, 245 Minn. 249, 72 N.W. 2d 364, 54 A.L.R.2d 316 (1965).] He is required to exercise due care and perform his services with the skill of a reasonably prudent man having the training and competence of an accountant. [*Ultramares Corp. v. Touche*, 225 N.Y. 170, 174 N.E. 441, 444, 74 A.L.R. 1139 (1931); W. Prosser, *Handbook on the Law of Torts*, sec. 32 (4th ed. 1971).] This standard is known as the "reasonable C.P.A. test." The accountant must use due care in accordance with the standards of his profession in the performance of the audit. The auditing standards are the authoritative rules established by the accounting profession for measuring the quality of the audit by the auditor. The auditing procedures are those acts to be performed by the accountant during the course of the audit. (Comm. on Auditing Procedure, AICPA, *Auditing Standards and Procedures No. 33*, 15 (1963); Meigs, *supra* at 21-22.] Most law suits involving accountants center on the issue whether the accountant has met the auditing standards and has used auditing procedures sufficient under the circumstances to enable him to render a professional opinion on management's financial statements. [A. Marinelli, "The Expanding Scope of Accountants' Liability to Third Parties," 23 *Case W. Res. L. Rev.* 113 (1971).]

Depending upon the facts and circumstances, failure to exercise the requisite degree of care exposes the accountant to liability in tort for fraud, gross negligence, or to liability for breach of contract. [*Gammel, supra*; 1 Am. Jur. 2d *Accountants* secs. *15, 16 (1962).*] *In defense, the accountant must establish his due care by showing that the procedures he used were reasonable when compared to the accounting profession's*

auditing standards and procedures. [*See Note*, 26 *Okla. L. Rev.* 383 (1973).] The best evidence of whether an accountant exercised due care is usually the working papers prepared by him in the course of his audit. [W. Coakley, "Accountants' Legal Liability," 126 *J. Accountancy* 58, 58-59 (July 1968); Stansbury, *North Carolina Evidence* secs. 32, 155 (rev. ed. 1973); *see Kinston Bldg. Supply Co. v. Murphy*, 13 N. C. App. 351, 185 S.E. 2d 440 (1971).] Moreover, expert accounting testimony is normally necessary to establish whether auditing stan-

dards and accounting principles have been followed. [Kurland, "Accountant's Legal Liability: Ultramares to BarChris," 25 *Bus. Lawyer* 155, 157 (1969); see *Petroleum Tank Service, Inc. v. Fortner*, 11 N. C. App. 91, 180 S.E. 2d 404 (1971).]

Some courts, however, either believe that the auditing standards and accounting principles are too vague and lax or do not understand their meaning. These courts have held accountants to a higher standard of care than is exercised by the accounting profession. [*United States v. Simon*, 425 F.2d 796 (2d Cir. 1969); *cert. denied*, 397 U.S. 1006, (1970) (accountant guilty of *criminal* fraud for not making fuller disclosure of an account receivable than was required by generally accepted accounting principles); *1136 Tenants' Corp. v. Max Rothenburg & Co.*, 36 App. Div.2d 804, 319 N.Y.S.2d 1007 (1971) (accountant liable for failure to discover managing agent's defalcations in preparing *unaudited* financial statements).]

But generally, the rule applied is that "accountants should not be held to a standard higher than that recognized in their profession." [*Escott v. BarChris Constr. Co.*, 283 F.Supp. 643, 703, 2 A.L.R.Fed. 86 (S.D.N.Y. 1968).]

Accountants violating the professional standard of care can be liable to third parties under common law and under federal securities laws. The general rule was laid down by Justice Cardozo in *Ultramares, supra*. It is that an accountant is liable for negligence only to the party with whom he contracted or to a third party whom the accountant knew, when the financial statements were being prepared, would rely on them. Cardozo reasoned that to allow a third party to sue an accountant for simple negligence would "expose accountants to a liability in an indeterminate amount for an indeterminate time to an indeterminate class." (*Ultramares, supra* at 1145.) Justice Cardozo shied away from his earlier decisions which lessened the privity requirements of third persons suing in tort. [*MacPherson v. Buick Motor Co.*, 217 N.Y. 382, 111 N.E. 1050, (1916) ("dangerous instrumentality") and *Glanzer v. Shepard*, 233 N.Y. 236, 135 N.E. 275, 23 A.L.R. 1425 (1922) ("end and aim of the transaction"); Note, 47 *Notre Dame L. Rev.* 588 (1972).]

He did note, however, that "even an opinion, especially by an expert, may be found to be fraudulent if the grounds for supporting[the opinion) are so flimsy as to lead to the conclusion that there was no genuine belief back of it." (*Ultramares, supra* at 447.)

Translated, it means that accountants can be liable to third persons not in privity of contract for fraud or gross negligence amounting to fraud.

Three recent cases affirmed the general rule by holding that accountants are not liable for negligence to third parties with whom there was no privity of contract. [*Stephens Industries, Inc. v. Haskins and Sells*, 438 F.2d 357 (10th Cir. 1971); *Investment Corp. of Florida v. Buchman*, 208 So.2d 291 (Fla.App. 1968),*cert. denied.*, 216So.2d 748 (Fla. 1968); *Canaveral Capital Corp. v. Bruce*, 214 So.2d 505 (Fla.App 1968).)

But the emerging trend has been to lessen the privity requirements and allow third persons relying on the accountant's opinion to sue for simple negligence. In *Ryan v. Kanne*, 170 N.W.2d 395 (Iowa 1969) and *Rusch Factors, Inc. v. Levin*, 284 F. Supp. 85 (D.R.I. 1968), both courts expanded the accountant's standard of care to the actually foreseen and limited class of third persons. The courts relied mainly on *Glanzer, supra.* and on the *Restatement (Second) of Torts* sec. 522 (Tent. Draft No. 12, 1966) in expanding the liability of the accountants. In *Shatterproof Glass Corp. v. James*, 466 S.W.2d 873, 46 A.L.R.3d 968 (Tex.Civ.App. 1971), the court traces the demise of the requirement of privity between the accountant and a foreseeable class of third persons.

In addition to fraud, gross negligence, and simple negligence actions, there is a possibility that a third party may sue as a third party beneficiary on the contract between the client and the accountant. *(See Investment Corp. of Florida, supra.)* But to date, no court has granted relief under the third party beneficiary theory. [Annot., "Liability of Public Accountant to Third Parties," 46 A.L.R.3d 979, 983 (1972).]

The accountant may also be liable to third persons not in privity of contract under the federal securities acts. The Securities Act of 1933 states that an accountant who expresses an opinion in a registration statement may be liable for third party losses if the registration statement contains misrepresentations or omissions of material facts necessary to prevent them from being misleading. [Securities Act of 1933, sec. 11, 15 U.S.C. sec. 77k(a) (1971).] The third parties who have sustained losses need to prove neither that they relied on the registration statements nor that the accountant was negligent. The burden of proof is on the accountant. [15 U.S.C. sec. 77k(b) and (c) (1971); *Escott, supra.* at 703.] The accountant may assert in his defense that third party losses were not the result of his errors or omissions in the statement. And he may assert the due diligence defense—that the audit work was adequate and reasonable to support his opinion. [15 U.S.C. sec. 77k(b) (1971); *Escott, supra* at 697-698.]

The Securities Exchange Act of 1934 under Section 18(a) subjects the accountant to liability for false or misleading financial statements filed under the Act. The plaintiff must show that a material fact was misrepresented or omitted from the statements and that he was damaged by relying on the statements. The accountant may defend by proving that "he acted in good faith and had no knowledge that such statement was false or misleading." [Securities Exchange Act of 1934, sec. 18(a), 15 U.S.C. sec. 78r (1971); *Fischer v. Kletz*, 266 F. Supp. 180 (S.D.N.Y. 1967).] Accountants have also been found liable under Section 10(b) and SEC Rule 10b-5. [15 U.S.C. sec. 78j(b) (1971) and 17 C.F.R. sec. 240.10b-5 (1967).] Although the accountant is not usually the buyer or seller of corporate securities, he may be sued as an aider, abettor or co-conspirator for any misleading statement "in connection with" the purchase or sale of securities. [*Fischer, supra.; SEC v. Texas Gulf Sulpher*, 401 F.2d 833 (2d Cir. 1968), *cert. denied*, 394 U.S. 976, (1969).] Liability may also be asserted under Section 14 of the 1934 Act. [15 U.S.C. sec. 78n (1971); see W. Knepper, *Liability of Corporate Officers and Directors* § 10.04 (1973).]

In summary, the accountant's function as an auditor is to render an opinion on management's financial statements. The opinion states whether management followed generally accepted accounting principles consistently and whether the accounting data is presented fairly. The audit is the basis of the accountant's opinion. If the audit is not conducted according to the profession's standards and procedures, the accountant is liable to his client for breach of contract or negligence. He may also be liable to third persons not in privity of contract under the common law or federal securities law.

CRIMINAL LAW: SUICIDE, A HEALTH PROBLEM NOT A CRIME

On April 8, 1974, the General Assembly of North Carolina abolished the common law crime of suicide.[1] Since suicide is no longer a crime, it follows that the attempt to commit suicide is also no longer a criminal offense.

Suicide is the second most frequent cause of death, after accidents, in young people between the ages of 15 and 24 years.[2] It is one of the first ten causes of death in all age groups.[3] In 1971, there were an estimated 22,-980 recorded suicides in the United States, and the trend shows an increase each year.[4] For each recorded suicide there are an estimated 8-10 serious attempts at suicide. About 3,000,-000 persons in the U.S. have attempted to commit suicide at one time or another, and of that number about 15% will later repeat the suicidal action.[5]

With these statistics has come an increased awareness of the suicide problem and a re-analysis of societal attitudes concerning suicide, which are reflected in N. C. Gen. Stat. Sec. 14-17.1. Research toward the understanding of suicide has been spearheaded by the Center for Studies of Suicide Prevention, National Institute of Mental Health, in Rockville, Maryland.[6]

At common law, suicide was an offense "against the king, who hath an interest in the preservation of all his subjects."[7] It was "a peculiar species of felony, a felony committed on oneself. A *felo de se* therefore is he that deliberately puts an end to his own existence, or commits any unlawful malicious act, the consequence of which is his own death."[8] The offender was punished "by an ignominious burial in the highway, with a stake through his body" and by a forfeiture of all his property to the king, depriving his wife of any rights of survivorship.[9]

In *State v. Willis*[10] it was recognized that suicide remained a criminal offense in North Carolina, but had been rendered unpunishable because the United States did not recognize forfeiture and because of constitutional provisions against cruel and unusual punishment.[11] The N. C. Supreme Court held in *Willis* that the attempt to commit suicide was a misdemeanor punishable by fine and imprisonment.

Two years before *Willis*, the American Law Institute had put forth a different view: "While attempted suicide is still viewed as a crime in England and apparently in a few states, we think it clear that this is not an area in which the penal law can be effective and that its intrusion on such tragedies is an abuse."[12] England abolished the common law crime of suicide in 1961.[13]

The court in *Willis* considered and rejected the idea that a person who would commit suicide might be abnormal mentally:

> It is also asserted 'that a person who commits suicide is abnormal mentally' and 'fails to distinguish the fine points of what is right and what is wrong.' It is often said that all persons who commit crime are mentally abnormal. This line of argument is not new, it was in vogue 200 years ago. Blackstone discusses this point: '...this excuse ought not to be strained to that length to which our coroner's juries are apt to carry it, vis. that the very act of suicide is an evidence of insanity.'

The General Assembly, in passing N.C. Gen. Stat. sec. 14-17.1 and abolishing the crime of suicide, has repudiated the judicial stance of *Willis* and legislated in accord with the Model Penal Code. Whereas the court in *Willis* rejected the argument that a person who would commit suicide is "abnormal mentally", N.C. Gen. Stat. sec. 14-17.1 reflects society's changed attitude toward suicide and society's recognition that suicide is not a crime but a mental health problem.

First, the penalty for suicide was abolished. Now, the crime itself is abolished, and it follows that the attempt to commit suicide can no longer be a crime.

There may, however, be a lacuna in the North Carolina law: if suicide is no longer a crime, can a person who aids and abets, or an accessory before the fact be prosecuted under the present law? That is, is a person a criminal who induces someone to commit what is no longer a crime? It may still be possible to prosecute someone who induces or aids another to commit suicide for second degree murder under N.C. Gen. Stat sec. 14-17: "...all other kinds of murder shall be deemed murder in the second degree..." However, the law could be made more certain by passage of a statute specifying that it is a criminal offense to cause or aid another to commit suicide.[15]

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[6]For an extensive annotated survey of recent research in suicide see, "Research in Suicide," *Suicide Prevention in the 70s*, Center for Studies of Suicide Prevention, NIMH, Rockville, Maryland, 1973.

[7]4 Blackstone, *Commentaries* 189.

[8]*Id.*

[9]*Id.*, p. 190.

[10]255 N.C. 473, 121 S.E.2d 854 (1961).

[11]*U.S. Const.* amend. VIII.

[12]Model Penal Code § 201.5, Comemnt (Tent. Draft No. 9, 1959).

[13]1961 *Crim. L. R.* 591.

[14]*State v. Willis*, *supra*, 477f.

[15]One such statute has been suggested: Model Penal Code § 210.5. (P.O.D. 1962):

> Causing or Aiding Suicide:
>
> (1) *Causing Suicide as Criminal Homicide*. A person may be convicted of criminal homicide for causing another to commit suicide only if he purposely causes such suicide by force, duress or deception.
>
> (2) *Aiding or Soliciting Suicide as an Independent Offense*. A person who purposely aids or solicits another to commit suicide is guilty of a felony of the second degree if his conduct causes such suicide or an attempted suicide, and otherwise of a misdemeanor.

HAIR SAMPLES: WARRANTLESS SEARCH AND SEIZURE UNDER THE FOURTH AMENDMENT

The decision in the case of *State v. Sharpe*, 284 N.C. 157, 200 S.E.2d 44 (1973) is a further expression by the courts of what protections are afforded an individual under the Fourth Amendment to the United States Constitution. The United States Supreme Court, under the selective incorporation doctrine espoused by Justice Harlan in *Williams v. Florida*, 399 U.S. 78 (1970), has absorbed virtually all the guarantees of the Bill of Rights into the concept of Due Process as applied to the states through the Fourteenth Amendment. The constitutional question arising in this case deals

with unreasonable search and seizure under the Fourth Amendment. The case of *Wolf v. Colorado*, 338 U.S. 25 (1949), held that the Fourth Amendment protections were inherent in Due Process and were thus applied to the states through the Fourteenth Amendment. The exclusionary rule, making evidence seized in violation of the Constitution inadmissable at trial, was applied to the states as an implicit right in Due Process in the holding of *Mapp v. Ohio*, 367 U.S. 643 (1961). In the present case, the defendant, Terry Franklin Sharpe, relies on this rule to exclude evidence intimately linking him to the crime.

The defendant was found guilty of first degree murder and common law robbery in Charlotte, N.C. An accomplice in the crime,

Trull, pleaded guilty to second degree murder, and thereafter testified for the state. Trull's testimony was essentially that he and the defendant persuaded Garrison, the deaceased, to give them a ride home, whereupon they directed the deceased to a dead-end road in the city. According to Trull, the defendant knocked Garrison out of the car, and then fatally beat him with a bumper jack. The defendant then took $30 from the deceased and fled with Trull after setting the car on fire.

The defendant and Trull were arrested in Myrtle Beach, S.C. on information provided by the defendant's mother. Shortly after the defendant and Trull were returned to Charlotte, venous blood samples, head and arm hair samples, and fingernail scrapings were taken from them over the objection of their attorney and without a search warrant.

The defendant testified at the trial and admitted being at the scene of the crime. However, the defendant alleges that it was Trull who asked for a ride; directed the deceased to the dead-end road; threw the deceased out of the car; beat the deceased with the bumper jack and robbed him. The defendant testified, "I never put my hands on him (deceased) before the beating and he never put this hands on me." According to the defendant, Trull was the main actor in this crime, and not the defendant. *State v. Sharpe, supra at* 160.

At the trial, the state offered an expert witness in the field of comparisons of human and animal hair. She testified that the hair taken from under the deceased's fingernails was not similar to arm hair taken from the deceased, or arm hair taken from Trull, but was similar to arm hair taken from the defendant. This evidence was used by the state to rebut the defendant's defense that he did not touch the deceased in such a manner as to cause the deceased to claw his arm. If admissible, the evidence and testimony of the expert ties the defendant to a more active role in the crime than he admits.

One may ask whether this is really a question of self-incrimination under the Fifth Amendment. In the case of *Schmerber v. California*, 384 U. S. 757 (1966), a distinction is made between "testimonial" evidence and "real or physical" evidence, the former being protected under the Fifth Amendment, while the latter is not. "...The privilege is a bar against compelling 'communications' or 'testimony', but that compulsion which makes a suspect or accused the source of 'real or physical evidence' does not violate it (Fifth Amendment)". *Schmerber*.

The question thus raised in this case is whether the hairs taken from the defendant's

head and arms without a search warrant were obtained in violation of the Fourth and Fourteenth Amendments. Does the fact that the hairs taken from the defendant were taken without a search warrant exclude this evidence from trial? Exceptions to the necessity of a warrant in all cases have developed in recent decisions. The case of *Terry v. Ohio*, 392 U.S. 1 (1968) held that a reasonable search for weapons on a suspect without a warrant was permissible. The sole justification for the exception being for the protection of the arresting officer, and was thus strictly limited to an external search for weapons. In *Chimel v. California*, 395 U.S. 752 (1969), the Supreme Court stated that it was reasonable for the arresting officer, without a search warrant, to search the suspect for weapons; to search for evidence on the suspect's person to prevent concealment or destruction; and to search the area in the suspect's immediate control. The scope of warrantless search and seizure was expanded even further in the case of *Gustafson v. Florida*, 414 U.S. 260 (1973), which stated that a search may be made incident to any lawful arrest. In the present case, the defendant was in custody incident to a lawful arrest on a charge of first degree murder when the hair samples were taken.

The North Carolina Supreme Court applies the "plain-view" rule as to the seizure of the hair samples from the defendant.

> "Hair, like fingerprints or a man's facial characteristics or the body itself, is an identifying physical characteristic and is constantly exposed to public view...The law does not...prohibit a seizure without a warrant by an officer in the discharge of his official duties when the article seized is in plain view." *State v. Sharpe*, *supra*, 162, 163.

To require an officer to obtain a warrant to search for something that was in plain view of all who saw the defendant would be a vain exercise. *State v. Craddock*, 272 N.C. 160, 158 S.E.2d 25 (1967).

There next arises the application of the protection against "unreasonableness" provided by the Fourth Amendment. It is quite conceivable that the removal of hair as well as

the taking of other non-testimonial identification, may be done in an unreasonable manner so as to violate the Fourth Amendment. However, there is no evidence to the effect that the hair samples were taken in a forceful or unreasonable manner so as to cause any humiliation or affront to the defendant's integrity.

The court thus concludes that the taking of hair samples without a warrant was not unreasonable nor in violation of the Fourth Amendment. The taking of hair samples while the defendant was in custody was viewed as "no more prejudicial or offensive than the taking of his fingerprints or his photographs." *Sharpe at* 164. Thus the taking of hair samples has been added to the list of non-testimonial identification evidence which may be seized incident to a lawful arrest without a search warrant.

Sharpe involves the search and seizure of evidence incident to a lawful arrest. New N.C. Gen Stat. sec. 15A-273 et seg. (Pre-trial Criminal Procedure Act) which goes into effect July, 1975 provides for the seizure of non-testimonial identifications by court order *prior* to arrest based on probable cause that an offense had been committed punishable by a year or more in prison, but only on reasonable grounds to suspect the person named in the order. Hair samples are only one of the non-testimonial identifications that can be obtained under this new statute which covers fingerprints, palmprints, footprints, blood specimins, urine specimens, saliva samples, handwriting, and other sources of identifica-

tion. An interesting constitutional question may arise when this law takes effect as to whether such searches and seizures may be lawfully made prior to arrest.

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REAL PROPERTY: OPTIONS TO PURCHASE LAND NOT WITHIN THE RECORDATION STATUTE; LIS PENDENS; REQUISITE NOTICE

Lawing v. *Jaynes* and *Lawing* v. *McLean*, 285 N.C. 418 (1974)

In March of 1964, plaintiffs Lawing and defendants Jaynes entered into an agreement whereby Jaynes granted to plaintiffs an option to purchase a 33.5 acre tract of land and a dwelling thereon. The option agreement was filed and duly recorded.

On April 13, 1966, plaintiffs instituted an action against defendants Jaynes to compel specific performance of the option agreement. Plaintiffs alleged that they had exercised their option within the time allowed therefor, but that defendants Jaynes had refused to convey the property to plaintiffs as required by the option agreement.

Plaintiffs filed a Notice of Lis Pendens on June 10, 1966 in the Office of the Clerk of Superior Court of Henderson County in the form required by N.C. Gen. Stat. sec. 1-116. However, the Notice was not cross-indexed as required by N.C. Gen. Stat. sec. 1-117 until May 22, 1973.

Five years later, plaintiffs' action against defendants Jaynes was still pending, and on March 4, 1971, defendants Jaynes executed and delivered to defendants McLean a deed for the land and dwelling covered in the option agreement. The deed was filed and recorded March 5, 1971.

On December 27, 1972, plaintiffs instituted a separate action against defendents McLean to set aside and have declared void the deed from defendants Jaynes.

Because the Notice of List Pendens was not properly indexed as required by N.C. Gen. Stat. sec. 1-117, it was not constructive notice to defendants McLean since they bought the land in question in March of 1971, and the Notice of Lis Pendens was not cross-indexed until May 22, 1973.

Thus, unable to implement the Notice of Lis Pendens, plaintiffs relied upon the contentions that defendants McLean had actual notice of plaintiffs' rights to the land, as well as constructive notice by virtue of the recordation of the option agreement. (It is noteworthy at this point to distinguish between the registration and *lis pendens* statutes. N.C. Gen. Stat. sec. 47-18 (a) provides that conveyances are not valid to pass title against a purchaser for value but from the time of registration. Under the *lis pendens* statutes, however, a purchaser for value without actual notice of the pendency of litigation can proceed with confidence if the cross-indexed records disclose no such pendency.)

In order to obtain relief against defendants McLean, plaintiffs had to first show that they were entitled to specific performance from defendants Jaynes. The Court of Appeals found that plaintiffs had exercised their option within the time allowed and that, as between plaintiffs and defendants Jaynes, plaintiffs

were entitled to specific performance. The Supreme Court agreed. The question then was whether defendants McLean, in purchasing the land, had acquired rights which were superior to the rights of defendants Jaynes.

The Court remanded the *Lawing* v. *McLean* portion of the consolidated appeal to determine whether defendants McLean had actual notice of plaintiffs' action. The Court noted that when a person acquires an interest in property pending an action in which the title thereto is at issue, from one of the parties to the action, with actual or constructive notice of the action, he is bound by the judgment in the action. *Whitehurst* v. *Abbott*, 225 N.C. 1, 33 S.E. 2d 129 (1945). The Court also pointed out that the defendants McLean, in asserting a lack of notice, would have the burden of proof since they were better acquainted with all the circumstances surrounding the purchase of the land. *King* v. *McRackan*, 171 N.C. 752, 88 S.E. 226 (1916).

To what extent, if any, did the recorded option agreement constitute constructive notice to defendants McLean that plaintiffs had exercised their option and had instituted an action to compel specific performance? The Court held that the recorded option was not constructive notice since options are not required to be recorded under N.C. Gen. Stat. sec. 47-18(a). Therefore, there was no constructive notice of the exercise of the option, nor of the pending suit.

N.C. Gen. Stat. Sec. 47-18(a) provides:

> "No conveyance of land, or contract to convey, or lease of land for more than three years, shall be valid to pass any property as against lien creditors or purchasers for a valid consideration from the donor, bargainor, or lessor but from the time of registration thereof in the county where the land lies..."

The Court then reasoned that an option was not a "contract to convey" within the purview of the statute since plaintiffs were not legally bound to purchase the land and thus had no "interest" in the land, i.e. an option is not a contract to convey until the optionee exercises his right to buy, thus accepting the optionor's offer.

The Court then states why recorded options are not constructive notice, citing 92 C.J.S. *Vendor & Purchaser* sec. 341(1)(a) (1955):

> The registration or record of an instrument operates as constructive notice only when the statute authorizes its registration; and then only to the extent of those provisions which are within the registration statutes. Therefore, the registration of a deed or other instrument not entitled or required to be recorded is not constructive notice to subsequent purchasers.

The gravamen of this decision is that the recordation of an option agreement affords no protection to the optionee when a purchaser for value without *actual* notice purchases from the optionor. In trying to deal with the problem, however, the Court side-stepped the issue and begged the question. Do plaintiffs have an "interest" in the land substantial enough to merit the protection by recordation? Plaintiffs have an interest if the Court decides they have an interest. The Court, however, failed to decide. Rather, the Court backed off from the interest question and proceeded to decide whether an option was a contract to convey.

The writer submits that it is a most reasonable interpretation that N.C. Gen. Stat. sec. 47-18(a) encompasses options to purchase land. The Court cited general section (1) (a) of 92 C.J.S. *Vendor & Purchaser* sec. 341 (1955) to buttress its position that an instrument not authorized by the statute to be recorded is not constructive notice. However, in the same volume at sec. 341(b)(1) which specifically addresses itself to options, it reads: "an option to purchase land, being for an interest in land...is recordable."

The Court intimated that an exercised option would have been a contract to convey and properly recordable, and that plaintiff, upon exercising his option rights, should have re-recorded the agreement. What the Court did not address itself to was the feasibility of an optionee's re-recording when the optionor has refused to convey. It would appear to be an exercise in futility.

Richard DeWitte Sparkman

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4. N.C. Gen. Stat. 47-18(a) (1959) (recordation statute).
5. *Lawing* v. *Jaynes* and *Lawing* v. *McLean*, 20 N.C. App. 528, 202 S.E. 2d 334 (1974).
6. *Chandler* v. *Cameron*, 229 N.C. 62, 47 S.E.2d 528, 3 A.L.R.2d 571(1948). (Registration is constructive notice as to all instruments authorized to be registered.)
7. *Trodgen* v. *Williams*, 144 N.C. 192, 56 S.E. 865, (1907). (The extension of an option to purchase real estate is a contract to convey land within a statute requiring the record of such contracts.)

THE SUPREMACY OF FEDERAL LAW IN LABOR DISPUTES

Beasley v. Food Fair of North Carolina, 42 U.S.L.W. 4689 (U.S. May 15, 1974)

The United States Supreme Court has ruled that discharged supervisory employees cannot seek damages under North Carolina's Right-to-Work Act. By failing to qualify as "employees" under the National Labor Relations Act two dismissed managers were excluded from seeking financial compensation under state law. Such action seemed necessary to the Court so that conflict between state and national legislation might be avoided.

Food Fair, the respondent, fired two meat department managers from stores in the Winston-Salem area because of their union activities. Local 525, Amalgamated Meat Cutters and Butcher Workmen of North America, charged the company with an Unfair Labor Practice under sec. 8(a) (3) of the National Labor Relations Act (29 U.S.C. sec. 158). The defendant, however, contended that supervisors were not protected by the Act, citing sec. 14(a) of the Act [29 U.S.C. sec. 164(a)]:

> ...but no employer...shall be compelled to deem individuals defined herein as supervisors as employees for the purposes of any law, either national or local, relating to collective bargaining.

As a result, the Regional Director refused to issue a complaint on the grounds of lack of jurisdiction and the General Counsel sustained this action on appeal. The narrow issue was the determination of whether a supervisor would be permitted to collect damages from his employer for wrongful discharge. The broader issue was whether a local statute could control in an area heretofore pre-empted by federal legislation. The North Carolina Court of Appeals reversed the summary judgment on the basis of *Hanna Mining Co. v. Marine Engineers*, 382 U.S. 181 (1965). The State Supreme Court, however, reversed the lower court and the United States Supreme

Court affirmed the high state court's decision denying the plaintiffs' right to collect.

The Supreme Court succintly stated its position on the federal-state dichotomy in *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959). In that instance the court overturned a state court's award of damages, under California's Civil Code, to an employer for harm resulting from a picketing of his lumberyard. In response to this restriction of legitimate union activities the Court stated:

> When the exercise of state power over a particular area of activity threatened interference with the clearly indicated policy of industrial relations, it has been judicially necessary to preclude the State from acting. *Garmon* at 243.

The corollary of this rule seemed to be that the state could regulate when the activity involved a "peripheral concern" of national labor law or where the particular instance dealt with conduct that might be better left as the state's responsibility. *United Auto Workers v. Russell*, 356 U.S. 634 (1957). If the national purpose is not subordinated, then the state is left free to operate. The Court pointed out that state action might be allowed where threats of public disorder or violence are iminent so that peace might be preserved. Only extraordinary circumstances demand state intervention. *Garmon*'s facts, however, provided no such compelling interest and the Supreme Court refused to affirm the compensation.

The principle of weighing the state's interest was the basis of the Court of Appeal's ruling in *Hanna* which, in turn, relied heavily on the *Garmon* decision. Particularly significant is the fact that *Hanna* dealt with supervisors, who, as in *Beasley*, are normally exempt under the National Labor Relations Act. In overturning the Wisconsin State Supreme Court's injunction of a boycott of the plaintiff's harbor facility the Court seemingly left the possibility for state action open. *Hanna*, at 194, states:

> "We do not retreat from *Garmon*. Rather, we consider that neither the terms nor the policies of that decision justify its extension to the present facts."

It then appeared to be a matter of judicial evaluation as to whether or not a state could enter a dispute. But the court failed to delineate any clear guidelines in this respect. That an injunction for a secondary boycott was not upheld in *Hanna* underscores the hesitancy the courts exhibit in this area. Along these lines the State Supreme Court and the United States Supreme Court agreed that *Beasley* was best left under the purview of the *Garmon* rule, i.e. out of the state's hands.

Essentially, the problem is that supervisors cannot exercise the discretion that is incumbent upon them in their positions (e.g. hiring, firing, and scheduling) and, simultaneously, be "in the trenches" with the rank and file at bargaining time. As noted the House Report on the Taft-Hartley amendment to the National Labor Relations Act, H.R. Rep. No. 245, 80th Cong., 1st Sess. 15 (1947):

> Management, like labor, must have faithful agents...not subject to influence and control of unions...and to carry on the whole of labor relations, to direct them...if...such authority is not merely routine or of a clerical nature which requires the use of independent judgment.

It would logically follow that the doctrine would be effectively negated if one's lower level supervisors were subject to union control and exhibited loyalty to the union before the company. Congressional support of this theory is clearly demonstrated through exemption of such personnel from the National Labor Relations Act. By ruling any other way a court would only frustrate this obvious intent.

That the North Carolina Supreme Court supports the above-mentioned view is readily apparent from the *Beasley* case. Although the discharge of regular employees would ordinarily constitute an Unfair Labor Practice, the Supreme Court properly deemed the discharge correct and in accord with the National Labor Relations Act. As pointed out in *Garmon*, at 247, "the obligation to pay compensation can be, indeed, is, designed to be a patent method of governing conduct and controlling policy".

The state cannot punish an employer for doing something that would be legal under federal statute despite any moral inequities that may attach to the act. Since no compelling state interest was present that demanded a deviation from standard policy the shift was properly avoided in the *Beasley* case. It is also important to note that the superiority and dominance of federal law was affirmed, thereby precluding the invocation of any form of redress against an individual in derogation of a statute. By refusing to allow damages in the case in point the North Carolina Supreme Court has come out squarely in favor of state subordination where no just cause to do otherwise exists. In light of the strong legislative and judicial history supporting this doctrine it seems unlikely that this ruling will be reversed in the near future.

Paul S. Lewis

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ALUMNI NEWS

KORNEGAY DISCUSSES CURRENT EVENTS

Michael Joseph

EDITORS NOTE: During Legislators' Day, Lawyers' Homecoming, September 21, 1974, Jurist Alumni Editor Mike Joseph talked with former Congressman Horace R. Kornegay. Mr. Kornegay was a member of the 87th-90th Congresses, and he is now President of The Tobacco Institute in Washington, D.C. Mr. Kornegay gave his views on matters ranging from amnesty for war resisters to the pardon of former President Nixon.

Q. What changes do you see in the law school since you were a student?

A. I went to school on the old campus. We had three classrooms on the second story of the college library. The front part of the building was composed of the law library. You have a beautiful facility here, and I know of none that are better appointed or with better facilities. Next, I would mention the size of the student body and the faculty. In my class there were about thirty students, and that was considered a large class because most of us were delayed in entering law school because of service in World War II. Most of us were veterans who had come back after serving in the war. The faculty was then composed of six full time teachers. Some practicing lawyers came and lectured then, and they were quite good.

Of course, I remember Professor Timberlake, one of the three greats that you refer to in Wake Forest Law School history—Dr. Gulley, Dr. White, and Professor Timberlake. Professor Timberlake taught me Real Property, and he was a gentleman and anyone who went to school under him will always remember him.

Dr. Lee came to Wake Forest at the same time that I entered law school. He came as Dean, if I recall correctly, from Temple. He was one of the really great professors that I had. It has been said that he scared more law into the average student than most professors could teach into them, and I would not argue with that statement too much. He had a knack about it which let the first year students know that they were about very serious business, and if they wanted to be a lawyer, he would do all that he could to train and help them, but if they didn't, and if they were just coming to school to be in school, that they might as well get out and do something else. He put the acid test to a student in a hurry.

Q. Do you feel that law school prepares its graduates to practice law today as well as in the past?

A. I would say that there is hardly any doubt that the student coming out of Wake Forest today is better equipped to enter the practice of law than the student who graduated twenty-five years ago. There are two or three reasons. The curriculum has expanded so that a student

Mr. Horace Kornegay

has more of an opportunity to take courses which center around the techniques of practicing law. Second, the opportunities for graduates to get into positions to serve as interns are far greater. I don't think when I graduated that there were many law clerks for judges in North Carolina, for federal court or for the Supreme Court of North Carolina. Today, these clerkships have been greatly expanded. This type of work exposes the law student to a whirlwind of legal activity in which he learns much about law.

However, I must say that it is very difficult in law school to give a student both the basic courses and practical experience. In law school the student gets a foundation but when the graduate gets out he knows little or nothing about the practical applications of law, at least that was my experience. For example, no matter how long you study the rules of evidence, the first time that you walk into a courtroom it is difficult to translate the book knowledge into courtroom action. Any good trial lawyer comes to know the rules of evidence by instinct through experience. If he has to stop to analyze a question to determine whether it is inadmissible as hearsay or is incompetent, before he can object a good trial lawyer on the other side will have the answer out of the witness and will be asking the next question. So, a lawyer learns, if he is a trial lawyer, to object by instinct. Having spent as many years as I did in the courtroom, even before the question was half out I could tell if I wanted to object to it.

As Judge F. Donald Phillips, one of the all time great superior court judges, used to say, "The only place to learn the rules of evidence is in the pit", referring to the area in the courtroom where the trial actually takes place. And he is exactly right. The lawyer is in a sense an actor, except he doesn't have a script. He knows what he is going to ask the witness, but after a little experience, the lawyer, particularly in criminal cases, must learn to frame his questions as the trial progresses.

Actual practice is indispensable to accompany the formal education to make a good lawyer.

Q. What factors do you think led to Richard Nixon's removal from office?

A. The real tragedy of Nixon, and it is bigger than the Watergate break-in, was that the man was an extremely ambitious individual. If you look into his political history and the races for office that he ran, you can see that he always wanted to be President since he first got into politics. In 1946, he ran for Congress and was elected, and there have been those who criticized his first campaign. After having served as Vice President under President Eisenhower, he dreamed of the day when he could run for President. He bided his time, and he ran in 1960, coming within a sixteenth of an inch of winning. It was so close that he could taste it, and that was a great disappointment to him. He then ran for Governor in his native state of California and was defeated there. That was a bitter disappointment.

He was down in the dumps. He decided to make a come-back, and he did a remarkable job of regaining public acceptability. He ran for President in 1968, and it was predicted that he would win by a large majority, but he just squeezed in. Now here are three races, one was a win, and two were losses. The first two Presidential races were very close. The man had great political ambitions, and had a burning desire to have a high degree of public acceptability. I think that all of these factors were building up to the point in 1972 when he and his advisors and supporters went all out to see that he won in his race, which was to be his last one.

Most Presidents want to build a record that will go down in history that will be remembered. I'm sure that it was no different for Mr. Nixon. They overreacted. The big tragedy of it all, not only personally for him but also for the country, was that this man didn't have to do these things, and his supportors didn't have to do these things.

In politics, as in anything else, too much money can be a corrupting influence. I talked with a Republican friend in the spring of 1972 and learned that his party had at least sixty million for the campaign and were pulling in more money. The accumulation of great wealth

can be a corrupting factor, and they had all of this money and didn't want to leave any stone unturned.

I think that it started in a small way, but after a course of time, they had progressed to the land of corruption. The great tragedy is that he didn't have to do it to win the election.

Q. Were you in favor of the pardon of Richard Nixon?

A. Personally, I was. It could have been argued that we should have tried him and put him in jail, but there are many ramifications that we should consider. The timing of President Ford's announcement was poor. He should have announced the pardon upon being sworn into office, instead of one month later. The Congress was talking of a pardon resolution at that time, and the pardon would have been better received. The announcement unexpectedly on a Sunday morning was a shock to most people, and the reaction was severe.

I haven't talked with anyone yet who wants to see the President go to jail. Punishment differs in different cases. I am quick to admit that I don't have the wisdom to know if justice has been done in the case. His punishment has been substantial, knowing what a disappointment that it must have been for Mr. Nixon to leave the office. Although I don't think that he ought to go to jail, we have to think of the men who served him who are in jail now. It is a difficult question, and some good arguments can be made on both sides.

Q. With the events surrounding the Watergate break-in, many people have suffered disillusionment with the political process. Gordon Strachan testified before Senator Ervin's committee that he would not advise young people to enter politics. How would you advise them?

A. I like to think of politics as the science of government. I think that it is one of the most laudable pursuits that man can engage in, if it is done on a moral and ethical basis, and that is the way that it ought to be done. I would not give the same advice as Mr. Strachan did for obvious reasons. If we don't have a constant source of young people going into public life, the country is over. My advice would be to encourage those who are so inclined to go into public life, because the hope for the future of this country is to get those people who have the proper moralistic and well-intended motivations to enter politics.

Public officials should have a high standard of morality, and they must have it to maintain the respect of all people. President Ford, when asked about what he would do to guide the behavior of those who worked for him in the White House answered, "If I do right, they will do right. If I do wrong, they will do wrong. I will set the standards." The Presidency is looked to by most people to set the standard and the tone for behavior in this country.

We must have the continued supply of fine young people into politics. I would admonish them that there are many pitfalls and almost constantly when they make a decision, to harken back to the way that they were taught as children by their parents, in their religious and moral training, and in school.

There is no reason that one has to be crooked in politics to succeed. I still believe that over ninety-five percent of the people in public office and public life are honest, fine people, many of whom are making great personal and financial sacrifices to serve. To let a small group of people contaminate all political life in this country would be like to "throw the baby out with the wash."

I can appreciate Mr. Strachan's feelings at the moment, but I doubt that he at that time was mentally qualified to give the long range advice and make the type of judgment that was required for the question. It was a little bit melodramatic.

Q. Do you favor unconditional amnesty for war resisters?

A. I do not favor unconditional amnesty for war resisters. I served in a different war, and I appreciate that there are differences. I don't know how we can operate a country if we can let the individual pick and choose the war that he likes and doesn't like. Everyone didn't support World War II. I can remember people in the early days of World War II who said that Britain and France should fight their own war.

There has not ever been a popular war, I guess, since the Crusades. We were attacked by the Japanese, and the Germans sunk many of our boats, and this resulted in greater acceptance of World War II. The United States was the policeman of the world in the early 1960's, inheriting the role from Britain after World War II.

I have strong feelings that if five hundred thousand young men served in Vietnam at one time, that we should not run off and leave them. I feel badly about doing it. Observing on television recently some of the attitudes of the war resisters who left the country, I have strong doubts as to whether they would be an asset to the country if they came back. This is a tough judgment to make. I appreciate the sensitivities of the feelings that a lot of them held. At the same time, I suspect that a lot of men who went to Vietnam and some who died there had much the same feeling, but had more of the spirit of answering the call of their country.

I have no feelings of malice toward them. I don't think that a lot of them went because they were true conscientious objectors. This country has recognized the role of the conscientious objector, and there is sufficient room that these people can serve in a noncombat way.

I feel sorry for their parents and their folks. I can't imagine anything that would cause a mother and father any greater pangs than to find themselves in this situation. I am not quarrelling with President Ford's limited amnesty proposal. But to make these people pay penalty would leave scars on this country that would take generations to heal.

Q. The Surgeon General has determined that tobacco may be detrimental to health, but the Federal Energy Office has given a preference to tobacco with regard to fuel allocation. Is this preference justifiable?

A. The charges regarding tobacco and cancer are the result of certain researchers' work. The statistics used are subject to serious question by some topflight statisticians in this country.

Tobacco has been traditionally the top cash crop in this country. Without it our balance of payments would be much worse than it is. The fuel preference can be justified on the basis of agricultural-economic grounds. Also, if a farmer plants different crops, it would be difficult to separate the fuel preference for tobacco from the fuel preference for other crops. Tobacco was the first cash crop and the first export of this country. Any decision not to favor tobacco with a fuel preference would have had serious repercussions.

Q. Do you think that in view of the "ITT" scandal and the "Milk Fund" that lobbying needs more regulation?

A. No. I think that what we need is good enforcement of the regulations that we have. Lobbyists now have to register and file reports every three months. Many loopholes were closed about three years ago so that all campaign contributions in excess of one hundred dollars have to be reported. The law is there. It has to be enforced. Murder is against the law, but murder still happens. The same is true with stealing. Some of this illegal conduct will continue, as people aren't perfect yet.

Without hamstringing the political operation of this country, we don't need further regulations. The "Milk Fund" gave unreasonably large sums to many people. Perhaps we need a rule that only a maximum amount of money could be contributed by a certain committee. It isn't wrong to give money to a candidate, but if it is with intent to obtain favors, then the contribution is illegal. It smacks of bribery. This isn't true of average campaign contributions.

A candidate must be careful of accepting money from questionable sources. If a contribution will bring about embarassment or conflict, he should not take it.

Q. Do you favor or oppose the Equal Rights Amendment?

A. My general inclination is to oppose the amendment. It will create a lot more problems than it will solve. It has become an emotional

issue. Maybe I'm old-fashioned. Being a close observer of government, if the amendment passed some cold-blooded administrator would try to draft women to fight in wars. We've seen this too often in other areas in recent years. The federal government will have to administer it in an impersonal manner.

We should stop to think of the full ramifications of the amendment. I think that if most women thought about the amendment, they would not favor it. Senator Ervin said that he didn't ever want to see the day when men and women were equal, because he always thought that women were more than equal!

This may be old-fashioned, but I think that we would be better in the long run if we recognized that there are some basic differences between men and women. It is not a question of inequality, but it is a question of difference. Women are superior to men in many respects. As far as the law is concerned, it is like matching oranges and apples.

I think that in the area of employment, women are discriminated against. Many employers operate on the idea that the man is the supporter of the family, and that any money that a woman earns is supplemental income for the family. We should adjust our thinking in this respect, and we should allow equal pay for equal work. But to go as far as the Equal Rights Amendment does, would, for me, to be to take it too far.

CLASS NOTES

1952

Edwin L. Beechay, III, has been named manager of the life, accident and group/railroad and medicare division of the claim department at the Travelers Insurance Companies, Baltimore, Md., office.

1955

Perry N. Walker is a partner with the firm of Frazier, Frazier, Mahler & Walker in Greensboro.

1956

Eugene Boyce is practicing law in Raleigh, N.C., and is a partner in the firm of Boyce, Mitchell, Burns & Smith.

1961

Leon H. Corbett has resigned his post as Assistant Dean of Wake Forest University School of Law and is now a professor of law teaching full time.

1963

Ralph A. Walker has been appointed a Special Superior Court Judge. He formerly served as County Attorney of Guilford County.

1966

Edward R. White, M.D., J.D. has joined the Forensic Science Division of the Armed Forces Institute of Pathology as a civilian consultant, effective July 1, 1974.

1969

Malcolm Howard has left James St. Clair's staff and has opened his own office in Greenville, N.C.

Russell G. Walker has left the practice of law and is working for a closely-held corporation in Asheboro, N.C.

James Wilson has opened his own office in Liberty, N.C.

Allan Head recently completed his tour of duty in Europe with the Army Security Agency and assumed his duties on December 1, 1973, as newly appointed Executive Secretary of the North Carolina Bar Association in Raleigh, North Carolina.

Thomas Meritt Bumpass, Jr., is practicing law in Cleveland, Ohio, and is an associate with the firm of Thompson, Hine & Flory.

1971

Buddy Herring has assumed the position of Assistant Dean and Placement Director for the Wake Forest University School of Law.

Ronald H. Davis and **Raymond W. Postlethwait, Jr.,** have formed a partnership with J. Reid Potter in Charlotte, for the general practice of law.

1972

Steve Adams is with the American Credit Corporation in Charlotte, N.C.

Ronald D. Payne has received the L.L.M. degree from the University of Miami.

1973

H. Grey Goode received the L.L.M. degree from the University of Miami.

Paul P. Hinkle received the L.L.M. degree from the University of Miami.

Allan M. Migdall received the L.L.M. degree from the University of Miami.

1974

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